



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Tenant under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused to the rental unit, site or property by the Tenant, their pets, or their guests;
- Authorization to withhold the security deposit for money owed; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the Agent), who provided affirmed testimony. Neither the Tenant nor an agent for the Tenant attended. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Landlord's documentary evidence and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to the Tenant at the rental unit by registered mail on September 24, 2020. As there was no documentary evidence or testimony before me to the contrary, I accept that the above noted documents were sent to the Tenant at the rental unit by registered mail on September 24, 2020. Section 90(a) of the Act states that documents sent by registered mail, if not earlier received, as deemed received five days later. I find that the rental unit address qualifies as a valid address for service for the Tenant under

sections 88 and 89 of the Act, and therefore deem the registered mail received by the Tenant on September 29, 2020, five days after it was sent, in accordance with section 90(a) of the Act.

The Tenant provided me with the registered mail tracking number and the Canada Post website confirms that the registered mail was sent as described above and signed for on September 17, 2018. As a result, I find that the Landlord was served in accordance with the Act and the Rules of Procedure on September 17, 2018.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused to the rental unit, site or property by the Tenant, their pets, or their guests?

Is the Landlord authorized to withhold the security deposit for money owed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me, signed on August 27, 2019, states that the one year fixed term of the tenancy commenced on October 1, 2019, and was set to end on September 30, 2020, after which time the tenancy would be month to month. The tenancy agreement states that rent in the amount of \$1,025.00 is due on the first day of each month and that a security deposit in the amount of \$512.50 was paid. During the hearing the Agent confirmed that to the best of their knowledge, these are the correct terms of the tenancy agreement.

The Agent stated that during the course of the tenancy, the Tenant caused numerous cigarette burns to the decking material, necessitating repairs of over \$1,000.00. In support of this testimony the Agent pointed to photographs of the deck and a copy of

the move-in condition inspection report showing the state of the balcony at the start of the tenancy.

The Agent stated that although the Landlord was initially seeking the full cost of the repairs, plus authorization to retain the security deposit, the property has since been sold and the realtor paid the difference between the amount of the repairs and the \$512.50 security deposit. As a result, the Agent sought only retention of the \$512.50 security deposit and recovery of the filing fee on behalf of the Landlord. The Agent stated that to their knowledge, the Tenant has also recently vacated the rental unit.

Although the phone line remained open for 13 minutes, no one attended the hearing on behalf of the Tenant to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that the Tenant was deemed served with notice of the hearing, a copy of the Landlord's Application and the Landlord's documentary evidence on September 29, 2020, well in advance of the hearing.

Analysis

As there is no documentary evidence or testimony before me to the contrary, I accept as fact that the detail of the tenancy agreement are as set out in the tenancy agreement and that the Tenant caused at least \$1,000.00 in damage to the decking material of the rental unit, which they did not repair as required by sections 32(3) and 37(2)(a) of the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. However, it also states that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

As stated above, I am satisfied that the Tenant breached sections 32(3) and 37(2)(a) of the Act by damaging the deck of the rental unit in a way that does not constitute reasonable wear and tear as set out in Policy Guideline 1, and by failing to repair it either during the course of the tenancy or at the end of the tenancy as required by the Act. I am also satisfied that this damage cost in excess of \$1,000.00 to repair. However, the Agent testified that the Landlord only suffered a loss of \$512.50 as a result, as the realtor who recently sold the rental unit paid the difference between the \$512.50 security deposit amount and the cost of repairs. As a result, I am also satisfied that the

Landlord suffered a \$512.50 loss as a result of the Tenant's breach of section 32(3) of the Act and that they were reasonable in minimizing this loss, as the repair costs seem reasonably economic to me, and the Landlord is seeking only retention of the security deposit, not the full cost of repairs.

Based on the above, I award the Landlord \$512.50 in compensation for damage or loss pursuant to sections 7, 32(3), and 37(2)(a) of the Act. As there is no evidence before me that the Landlord extinguished their right to claim against the security deposit for damage or that the Tenant was otherwise entitled to the return of their deposit under the Act, I therefore authorize the Landlord to retain the \$512.50 security deposit in repayment of this amount, pursuant to section 72(2)(b) of the Act.

As the Landlord was successful in their Application, I also award them recovery of the \$100.00 filing fee, pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, the Landlord is therefore entitled to a Monetary Order in the amount of \$100.00, and I order the Tenant to pay this amount to the Landlord.

Conclusion

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's \$512.50 security deposit in recovery of amounts owed for damage to the deck.

Pursuant to section 67 of the Act, I also grant the Landlord a Monetary Order in the amount of **\$100.00**. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 12, 2020

Residential Tenancy Branch